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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

RIN 0750-AI45

Defense Federal Acquisition Regulation Supplement: Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States (DFARS Case 2014-D023)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update the clause entitled "Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States."

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2014-D023, using any of the following methods:

- o *Regulations.gov*: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2014-D023" under the heading "Enter keyword or ID" and

selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2014-D023." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2014-D023" on your attached document.

- o *E-mail:* *osd.dfars@mail.mil*. Include DFARS Case 2014-D023 in the subject line of the message.

- o *Fax:* 571-372-6094.

- o *Mail:* Defense Acquisition Regulations System, Attn: Ms. Jennifer Hawes, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Jennifer Hawes, telephone 571-372-6115.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to amend the DFARS to make the following updates to the clause at 252.225-7040, Contractor Personnel

Supporting U.S. Armed Forces Deployed Outside the United States,
to—

- Remove "humanitarian assistance operations" at paragraphs (b)(1)(ii) and (q)(2), because humanitarian assistance operations are a subset of peace operations already referenced at (b)(1)(iii) and (q)(3);
- Clarify at paragraph (d)(3) that both contractors authorized to accompany the Force (CAAF) and non-CAAF personnel must be made aware of information related to sexual assault offenses by adding "and non-CAAF";
- Add subparagraph (d)(5)(iii) to clarify that the section on reporting alleged crimes does not create any rights or privileges that are not authorized by law or DoD policy;
- Change the form at subparagraph (e)(1)(ii)(C)(3) from the "Public Health Service Form 791, International Certificate of Vaccination" to the "U.S. Centers for Disease Control and Prevention (CDC) Form 731, International Certificate of Vaccination or Prophylaxis as Approved by the World Health Organization";
- Change the reference at paragraph (e)(1)(iv) from "DoD Directive 4500.54, Official Temporary Duty Abroad, and DoD 4500.54-G, DoD Foreign Clearance Guide" to "DoD Directive 4500.54E, DoD Foreign Clearance Program";

- Change the hyperlink for the Synchronized Predeployment and Operational Tracker (SPOT) web-based system at subparagraph (g)(2) from "<https://spot.altess.army.mil/privacy.aspx>" to "<https://spot.dmdc.mil/>";
- Add the title of DoD Instruction 3020.41, Operational Contractor Support, at subparagraph (j)(1); and
- Make an editorial correction in paragraph (j)(2), by removing the hyphen in the phrase "will notify".

In addition, the rule removes "humanitarian assistance operations" from the clause prescription at 225.7402-5(a)(2), because it is a subset of peace operations already referenced at 225.7402-5(a)(3).

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O.

12866, Regulatory Planning and Review, dated September 30, 1993.
This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely provides updates to references and links currently included DFARS clause 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The objective of this rule is to accomplish the following clarifications and updates to the clause at DFARS 252.225-7040—

- Remove "humanitarian assistance operations" at paragraphs (b)(1)(ii) and (q)(2), because humanitarian assistance operations are a subset of peace operations already referenced at (b)(1)(iii) and (q)(3);
- Clarify at paragraph (d)(3) that both contractors authorized to accompany the Force (CAAF) and non-CAAF personnel must be made aware of information related to sexual assault offenses by adding "and non-CAAF";

- Add subparagraph (d)(5)(iii) to clarify that the section on reporting alleged crimes does not create any rights or privileges that are not authorized by law or DoD policy;
- Change the form at subparagraph (e)(1)(ii)(C)(3) from the "Public Health Service Form 791, International Certificate of Vaccination" to the "U.S. Centers for Disease Control and Prevention (CDC) Form 731, International Certificate of Vaccination or Prophylaxis as Approved by the World Health Organization";
- Change the reference at paragraph (e)(1)(iv) from "DoD Directive 4500.54, Official Temporary Duty Abroad, and DoD 4500.54-G, DoD Foreign Clearance Guide" to "DoD Directive 4500.54E, DoD Foreign Clearance Program";
- Change the hyperlink for the Synchronized Predeployment and Operational Tracker (SPOT) web-based system at subparagraph (g)(2) from "<https://spot.altess.army.mil/privacy.aspx>" to "<https://spot.dmdc.mil/>";
- Add the title of DoD Instruction 3020.41, Operational Contractor Support, at subparagraph (j)(1); and
- Make an editorial correction in paragraph (j)(2), by removing the hyphen in the phrase "will notify".

In addition, the rule removes "humanitarian assistance operations" from the clause prescription at 225.7402-5(a)(2),

because it is a subset of peace operations already referenced at 225.7402-5(a)(3).

According to the Federal Procurement Data System, DoD awarded 506 contracts in Fiscal Year 2013 requiring performance overseas in support of contingency, humanitarian or peace operations. Of the 506 contracts, only 76 contracts (15%) were awarded to small businesses. At this time, there is no way of estimating how many contracts may be awarded requiring performance outside the United States in support of other military operations or exercises, when designated by the Combatant Commander; however, the number of small businesses awarded such contracts is expected to be minimal.

The rule does not impose any additional reporting, recordkeeping, and other compliance requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternatives to the rule. The impact of this rule on small business is not expected to be significant.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit

such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2014-D023), in correspondence.

IV. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C chapter 35); however, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704-0460, entitled Synchronized Predeployment and Operational Tracker (SPOT) System.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 225 and 252 are proposed to be amended as follows:

1. The authority citation for parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 225—FOREIGN ACQUISITION

225.7402-5 [Amended]

2. Amend section 225.7402-5, by removing paragraph (a)(2) and redesignating paragraphs (a)(3) and (4) as paragraphs (a)(2) and (3), respectively.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 252.225-7040 by—

a. Removing the clause date "(MAY 2014)" and adding "(DATE)" in its place;

b. Removing paragraph (b)(1)(ii) and redesignating paragraphs (b)(1)(iii) and (iv) as paragraphs (b)(1)(ii) and (iii), respectively;

c. In paragraph (d)(3) introductory text, removing "CAAF are aware" and adding "CAAF and non-CAAF are aware" in its place;

d. In paragraph (d)(3)(i), removing "DoDD 6495.01" and adding "DoD Directive 6495.01" in its place;

e. Adding paragraph (d)(5)(iii);

f. Revising paragraph (e)(1)(ii)(C)(3);

g. In paragraph (e)(1)(iv), removing "DoD Directive 4500.54, Official Temporary Duty Abroad, and DoD 4500.54-G, DoD foreign Clearance Guide" and adding "DoD Directive 4500.54E, DoD Foreign Clearance Program" in its place;

h. In paragraph (g)(2), removing

"<https://spot.altess.army.mil/privacy.aspx>" and adding

"<https://spot.dmdc.mil>" in its place;

- i. In paragraph (j)(1) by removing "DoD Instruction 3020.41" and adding "DoD Instruction 3020.41, Operational Contractor Support" in its place;
- j. In paragraph (j)(2), removing "will-notify" and adding "will notify" in its place; and
- k. Removing paragraph (q)(2) and redesignating paragraphs (q)(3) and (4) as paragraphs (q)(2) and (3), respectively.

The addition and revision read as follows:

252.225-7040 Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States.

* * * * *

(d) * * *

(5) * * *

(iii) That this section does not create any rights or privileges that are not authorized by law or DoD policy.

* * * * *

(e) * * *

(1) * * *

(ii) * * *

(C) * * *

(3) All CAAF and selected non-CAAF, as specified in the statement of work, shall bring to the designated operational area a copy of the U.S. Centers for Disease Control and Prevention (CDC) Form 731, International Certificate of Vaccination or

Prophylaxis as Approved by the World Health Organization, (also known as "shot record" or "Yellow Card") that shows vaccinations are current.

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